

BRB Nos. 04-0111
and 04-0170

CHARLES R. LAIRD)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SAUSE BROTHERS, INCORPORATED)	DATE ISSUED: <u>Sept. 30, 2004</u>
)	
and)	
)	
EAGLE INSURANCE GROUP,)	
INCORPORATED)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeals of the Supplemental Decision and Order Awarding Attorney's Fees and Costs of Donald B. Jarvis, Administrative Law Judge, United States Department of Labor, and the Compensation Order Approval of Attorney Fee of Karen P. Staats, District Director, United States Department of Labor.

Charles Robinowitz, Portland, Oregon, for claimant.

Ronald W. Atwood (Ronald W. Atwood, P.C.), Portland, Oregon, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney's Fees and Costs (03-LHC-0093, 0094) of Administrative Law Judge Donald B. Jarvis and the Compensation Order Approval of Attorney Fee (Case Nos. 14-137465, 14-137842) of District Director Karen P. Staats on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*

(the Act).¹ The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, a welder/fitter, twisted his knee during the course of his employment on March 6, 2002, and returned to modified work with restrictions on March 14, 2002. On March 28, 2002, claimant experienced back pain and had to stop working. In his Decision and Order, the administrative law judge found claimant entitled to compensation for temporary total disability commencing March 30, 2002. Subsequent to this award, claimant's attorney filed fee petitions before both the administrative law judge and district director seeking fees for work performed before them.²

In his Supplemental Decision and Order, the administrative law judge found claimant entitled to an attorney's fee of \$25,141.23, representing 97.75 hours of attorney services at \$200 per hour and 10.25 hours of paralegal services at \$85 per hour, plus \$4,719.98 in costs. In her Compensation Order, the district director awarded claimant an attorney's fee of \$3,407.50, representing 15.25 hours of attorney services at \$190 per hour and 6 hours of paralegal services at \$85.00.

Claimant appeals the fee awards of both the administrative law judge and the district director, contending they erred in reducing his requested hourly rate from \$250 to \$200 and \$190 per hour, respectively. Employer responds, urging affirmance of both fee awards.

We reject claimant's contentions of error, and we affirm both fee awards. The administrative law judge and district director applied the applicable regulation, 20 C.F.R. §702.132(a), which states in pertinent part that, "[a]ny fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded," The administrative law judge found that an hourly rate of \$200 was warranted in this case, based on the services performed and hourly rates commonly

¹ By Board Order dated November 11, 2003, the appeals were consolidated for purposes of decision.

² Before the administrative law judge, claimant requested a fee of \$28,778.73 in fees and costs, representing 97.75 hours of attorney time at \$250 per hour and 10.25 hours of paralegal time at \$85 per hour. Before the district director, claimant requested a fee of \$4,072.50, representing 14.25 hours of attorney time at the rate of \$250 per hour and 6 hours of legal assistant time at \$85 per hour.

awarded in comparable case in the Portland, Oregon, area. Supp. Decision and Order at 2. The district director awarded an hourly rate of \$190 because of the routine nature of the activities performed; she found that two-thirds of the entries were for telephone calls and that almost all of the other entries were for file reviews or file maintenance. She also stated that an hourly rate of \$190 is commensurate with the rate awarded other attorneys of similar experience for comparable cases. Comp. Order at 2.

Contrary to claimant's contention, the administrative law judge and district director are not bound by hourly rates awarded to counsel in other cases. *See Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156 (1994); *Ferguson v. Southern States Cooperative*, 27 BRBS 16 (1993). Rather, each is in the unique position of evaluating the effectiveness of counsel, the nature of the activities performed, and the complexity of the issues involved in setting an appropriate hourly rate. *See generally Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3d Cir. 2001). The fact that counsel received fee awards based on an hourly rate of \$200 in 2000 does not require that he receive a higher hourly rate in 2003, where the administrative law judge and district director apply the regulatory criteria and rationally determine that the lower rate is appropriate given the circumstances of the case. Moreover, both the administrative law judge and the district director awarded all hours requested by counsel, but reduced the hourly rate, in part, due to the nature of the services performed. In this regard, we reject claimant's contention that the district director abused her discretion in awarding a lower hourly rate than did the administrative law judge. The district director rationally determined that the routine nature of the services performed while the case was pending before her office warrant a lower hourly rate. *See* 20 C.F.R. §702.132(a).

Finally, claimant's mere assertion that the awarded hourly rates do not conform to the reasonable and customary charges in the area where this claim arose does not establish error in the awarded hourly rates. *See generally Edwards v. Todd Shipyards Corp.*, 25 BRBS 49 (1991), *rev'd on other grounds sub nom Edwards v. Director, OWCP*, 999 F.2d 1374, 27 BRBS 81(CRT) (9th Cir. 1993), *cert. denied*, 511 U.S. 301 (1994). The administrative law judge and district director considered the support for each party's contentions concerning the appropriateness of the requested hourly rate for Portland, Oregon, and, as discussed, also addressed the regulatory criteria in determining the appropriate rates. Claimant has not met his burden of showing that the administrative law judge and district director abused their discretion in this regard, and therefore the hourly rates awarded to counsel are affirmed. *See Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.*, 202 F.3d 259 (4th Cir. 1999) (table).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney's Fees and Costs and the district director's Compensation Order Approval of Attorney Fee are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge